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COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

West Central Regional Office
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Robert G. Burnley
Director

Steven A. Dietrich
Regional Director

COMMONWEALTH OF VIRGINIA WASTE MANAGEMENT BOARD CONSENT ORDER ISSUED TO FAIRCHILD INTERNATIONAL INCORPORATED VAD988193991

Section A: Purpose

This is a consent order issued under the authority of §§ 10.1-1182 *et seq.* and §§ 10.1-1402, 10.1-1405, and 10.1-1455 of the Code of Virginia (1950), as amended, by the Virginia Waste Management Board to Fairchild International Incorporated to resolve certain alleged violations of environmental laws and/or regulations at its facility in Glen Lyn, Virginia.

Section B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Code" means the Code of Virginia (1950), as amended.
2. "Board" means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1401 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Fairchild" means Fairchild International Incorporated, a West Virginia corporation registered to do business in Virginia.
6. "Order" means this document, also known as a consent order.

7. "Regulations" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* ("HWMR"). The specific provisions of Title 40 of the Code of Federal Regulations ("CFR") cited herein are incorporated by reference at 9 VAC 20-60-260, 9 VAC 20-60-261, 9 VAC 20-60-262, 9 VAC 20-60-264, 9 VAC 20-60-265, 9 VAC 20-60-268, and 9 VAC 20-60-270.
8. "RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, *et seq.*
9. "Regional Office" means the West Central Regional Office of the Virginia Department of Environmental Quality, which is located at 3019 Peters Creek Road, Roanoke, Virginia 24019.

Section C: Findings of Fact and Conclusions of Law

1. Fairchild International is a manufacturer of continuous mining equipment in Glen Lyn, Virginia. Waste streams at the Fairchild facility include spent waste paint related material (D001, F003, F005), waste xylene (D001, F003), waste flammable mineral spirits (D001), waste paint booth filters, fluorescent lights, used oil, grease, latex paint, sludge (containing soil, coal dust, and petroleum from the wash down area), and scrap metal.
2. DEQ staff inspected the Fairchild facility at Glen Lyn on March 9, 2005. Inspection results documented the following violations:

40 CFR § 262.11	Hazardous waste determination
40 CFR § 262.34(d)	Accumulation time violations for SQG
40 CFR § 264, Subpart I	Container storage area (TSD) operational requirements
40 CFR § 262.34	Container storage and management (container condition/leaks/closed containers/weekly inspection/labels), preparedness and prevention, contingency plan and emergency procedures, and training requirements for SQGs
40 CFR § 270.1(c) Va. Code § 10.1-1426.A 40 CFR § 268.50	Operation of a container storage unit without a permit; Storage of LDR wastes without complying with 40 CFR §§ 262.34 & 264 storage requirements
40 CFR § 264.1080	Storage of high VOC content waste in open containers
40 CFR § 279.22	Used oil labeling requirements

3. On June 14, 2005, the Department issued Notice of Violation ("NOV") No. 05-05-WCRO-003 to Fairchild. The NOV alleged the violations specified above. The hazardous waste determination violation involved failure to characterize 39 55-gallon drums, 12 five-gallon

pails, and an unknown quantity of fluorescent lamps. The March 9, 2005 inspection also documented open containers, a partially-full drum with a hole in its side, hazardous waste containers that were not properly labeled, and used oil containers that were not labeled "Used Oil". Fairchild did not designate an Emergency Coordinator, did not post emergency information as required, and did not provide proper hazardous waste handling and emergency procedures training to its employees. Fairchild also did not comply with container storage area management requirements.

4. After the inspection, Fairchild disposed of over 18,500 pounds of waste paint related material, waste xylene, and waste flammable liquid, all of which were manifested as hazardous wastes. Most of these materials were stored in a locked building that was not accessible during the inspection. Because Fairchild could not document any proper disposal of hazardous waste for the previous five years, it is evident that Fairchild accumulated enough hazardous waste at the container storage area to be classified as an unpermitted storage facility.
5. DEQ staff met with Fairchild representatives at the Regional Office on July 19, 2005 and at the Fairchild facility on August 5, 2005. At the first meeting, Fairchild presented documentation of implementation of a hazardous waste management program and the removal and proper disposal of the wastes that were present at the site during the March 9 inspection. During the follow-up site visit DEQ staff found no evidence of a release in the storage building. By that time all old hazardous wastes had been removed for proper disposal.

Section D: Agreement and Order

Accordingly, the Board, by virtue of the authority of Va. Code § 10.1-1182 *et seq.* and §§ 10.1-1402, 10.1-1405, and 10.1-1455 orders Fairchild and Fairchild agrees that the civil charge in settlement of the violations alleged herein is Six Thousand Dollars (\$6,000.00). Fairchild shall pay One Thousand Dollars (\$1,000.00) of this civil charge not later than thirty (30) days after the effective date of this Order. Payment of the remaining \$5,000.00 shall be made in five installments of \$1,000 each, due on the following schedule:

Installment Number	Amount Due	Due Date
1	\$1,000.00	March 15, 2006
2	\$1,000.00	April 15, 2006
3	\$1,000.00	May 15, 2006
4	\$1,000.00	June 15, 2006
5	\$1,000.00	July 15, 2006

Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, VA 23240

Either on a transmittal letter or as a notation on the check, Fairchild shall: 1) indicate that the check is submitted pursuant to this Order, and 2) include its Federal Identification Number.

Section E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Fairchild, for good cause shown by Fairchild, or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations pertaining to the facility specifically identified herein, including the violations specified in the Notice of Violation issued by the Department to Fairchild on June 14, 2005. This Order shall not preclude the Board or the Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the terms of this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Fairchild admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Fairchild consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Fairchild declares that it has received fair and due process under the Administrative Process Act, Code §§ 2.2-4000 *et seq.*, and the Virginia Waste Management Act, Code § 10.1-1400 *et seq.*, and waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding, or to judicial review of, any action taken by the Board or the Director to enforce this Order.
6. Failure by Fairchild to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or

Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Fairchild shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, or other act of God, war, strike, or other such occurrences. Fairchild must show that the circumstances resulting in the noncompliance were beyond its control and were not due to a lack of good faith or diligence on its part. Fairchild shall notify the Director and the Director of the Department's West Central Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director and the Director of the Department's West Central Regional Office within 24 hours of the commencement of the condition causing or anticipated to cause the delay or noncompliance shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. Any plans, reports, schedules or specifications attached hereto or submitted by Fairchild and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
11. This Order shall become effective upon execution by both the Director or his designee and Fairchild. Notwithstanding the foregoing, Fairchild agrees to be bound by any compliance date that precedes the effective date of this Order.
12. This Order shall terminate upon receipt by DEQ of the funds specified in Section D herein.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Fairchild from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

13. By the signature of an authorized official below, Fairchild voluntarily agrees to the issuance of this Order.
14. The undersigned representative of Fairchild certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Fairchild to this Order. Any documents to be submitted pursuant to this Order shall be submitted by a responsible official of Fairchild.

And it is so ORDERED this day of JANUARY 20, 2006.

Steven A. Dietrich
FOR DAVID PAYLON ~~Robert G. Burnley~~, Director
Department of Environmental Quality

Seen and Agreed to: Danny Redden
Fairchild International Incorporated.

The foregoing instrument was acknowledged before me on NOV. 30, 2005

by DANNY REDDEN, SENIOR VICE PRESIDENT, on behalf of Fairchild International
(name) (title)

Incorporated, in the County/City of GILES, State of VIRGINIA.

William K. Smith, Jr.
Notary Public

My Commission expires: June 30, 2009